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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/561,353

12/19/2005

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EXAMINER

HICKS, ROBERT J

ART UNIT

PAPER NUMBER

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MAIL DATE

DELIVERY MODE

07/09/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/561,353	Applicant(s) SHINOBI, NORIKAZU	
	Examiner ROBERT J. HICKS	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 December 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/21/2006</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Priority

1. Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: No. 60.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: No. 2a.

Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b), are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. **Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

6. Regarding claims 1-3, the phrase "An in mold labeled type plastic container" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "type"), thereby rendering the scope of the claim(s) unascertainable. See *MPEP* § 2173.05(d).

7. Claim 4 is rejected to as being dependent upon rejected base claims 2 and 3, respectfully. Claims 5-9 are rejected to as being dependent upon rejected base claims 1, 2, and 3, respectfully.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

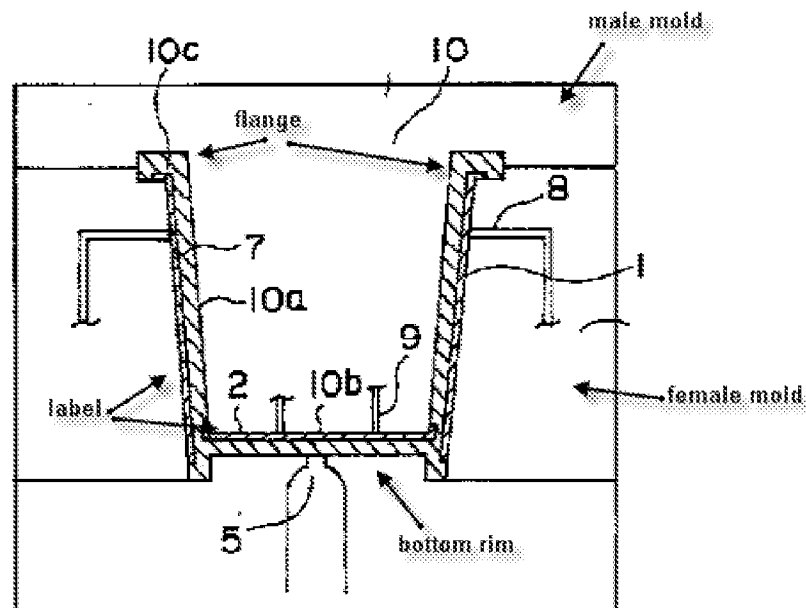
9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 1-5, 7, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shinoki et al. (Japanese Patent Application No. 11-105067) [hereinafter Shinoki] in view of Okabe et al. (USPN 5,257,709) [hereinafter Okabe].

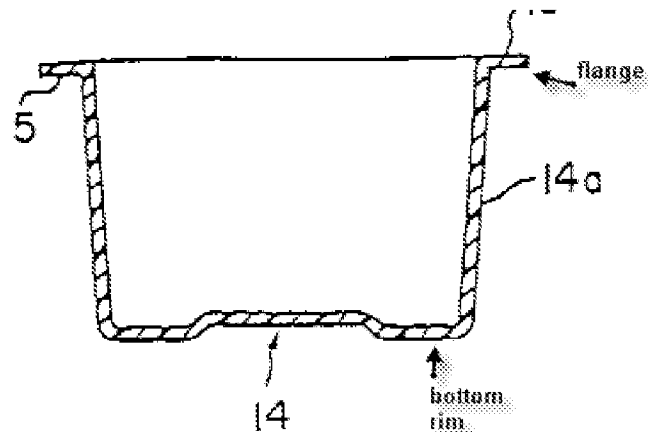
11. Regarding Claims 1-3, the publication to Shinoki – an in-mold label container – discloses an in-mold labeled plastic container [10, Paragraph 6 Lines 5-6, Paragraph 14 Line 1] fabricated by an in-mold labeling fabricating method [3, 4] by which molding of the container and labeling are accomplished at the same time by fitting an in-mold label [1, 2] into a gap [Fig. 1a], and injecting molten resin [7, Paragraph 8 Lines 5-8] into said gap, said gap being formed by using a female metal mold [3] and a male metal mold [4] and by joining said female mold and male mold [Fig. 1a]; the in-mold label container being characterized in a flange portion [10c] formed at the upper end of the side part of the container, and a bottom rim [10b] formed on the bottom part of the container [Fig. 2a], with the bottom rim labeled in the similar way to the side part of the container [Fig. 2a].



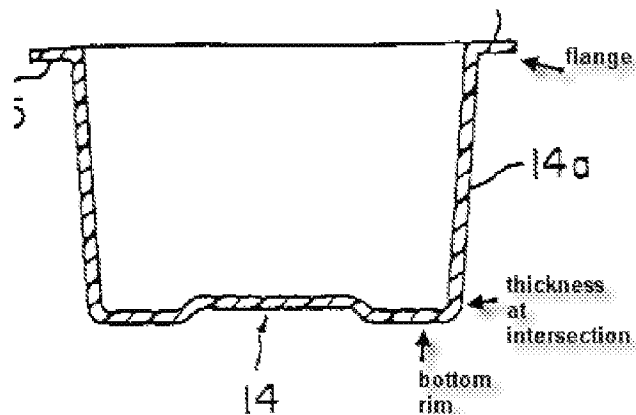
Shinoki does not expressly disclose that the flange has dimensions of 2 mm or more in flange width and 0.5 mm or more in flange thickness, or that the bottom rim has a dimension of not less than 0.3 mm but not more than 20 mm. However, the patent to Okabe – a plastic container made by molding – discloses a container [Okabe, 14] with a flange [Okabe, 15] and a bottom rim portion [Okabe, 14b], in which the flange could have a width ranging between 1.0 and 2.5 mm, and a thickness ranging from 0.2 to 1.0 mm [Okabe, Col. 24 Lines 15-17], and in which the bottom rim portion could appear to have a thickness between 0.3 mm and 2.0 mm [Okabe, Col. 10 Lines 6-9]. It would have been obvious at the time of the invention to one of ordinary skill, with known options available to one of ordinary skill within their technical grasp leading to anticipated success, to modify the dimensions of the flange and bottom rim portion in the Shinoki container to have a flange width more than 2.0 mm plus thickness more

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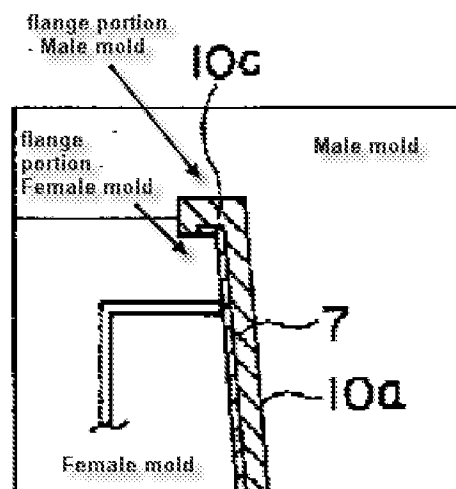
than 0.5 mm, and a bottom rim with a dimension between 0.3 and 2.0 mm, as suggested by Okabe, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. See *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).



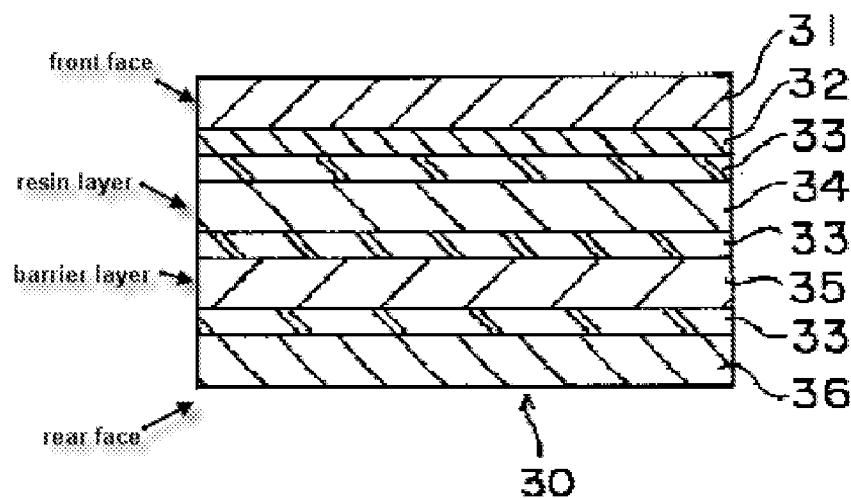
12. Regarding Claim 4, Shinoki in view of Okabe discloses all the limitations substantially as claimed, as applied to claims 2 and 3 above, respectfully; further, Okabe teaches the relationships among the wall thickness of the intersection between said bottom rim and the bottom part of the container (A) [**Okabe**, 14a, 14b], the wall thickness of the bottom part of the container (B) [**Okabe**, 14b] and the wall thickness of the side part (C) [**Okabe**, 14a] of the container are: $A \leq 2 \times B$ and $A \leq 2 \times C$. The wall thicknesses of the bottom rim portion and the side wall appear to be 1.1 mm, and the wall thickness at the intersection of the bottom wall and the side wall appears to also be 1.1 mm. Therefore, the relationship between the wall thicknesses appears to be met in Okabe.



13. Regarding Claim 5, Shinoki in view of Okabe discloses all the limitations substantially as claimed, as applied to claims 1, 2, and 3 above, respectfully; further, Shinoki teaches the container [**Shinoki**, 10] is fabricated by using said female metal mold [**Shinoki**, 3] and male metal mold [**Shinoki**, 4] which are a female metal mold and a male metal mold joined at the flange part in the formed container [**Shinoki**, Fig. 2a], and so designed that the flange width of a flange part formed by the female mold is smaller than the flange width of a flange part formed by the male mold [**Shinoki**, Fig. 2a].



14. Regarding Claim 7, Shinoki in view of Okabe discloses all the limitations substantially as claimed, as applied to claims 1, 2, and 3 above, respectfully; further, Shinoki teaches the label [Shinoki, 1] is a label having a configuration [Shinoki, 30] in which a plurality of thin films are stacked, the thin film positioned on the front face [Shinoki, 31] and the thin film positioned on the rear face [Shinoki, 36] consist of thin films of the same material [Shinoki, Fig. 6], and further at least a resin film layer [Shinoki, 34] and a barrier layer [Shinoki, 35] having a defined strength or barrier layers having a defined strength are stacked between these thin films [Shinoki, Fig. 6]. The cross-sectional area of Figure 6 appears to show that the two outermost layers are made of the same material. See *MPEP* § 608.02 (IX).



15. Regarding Claim 9, Shinoki in view of Okabe discloses all the limitations substantially as claimed, as applied to claims 1, 2, and 3 above, respectfully; further, Okabe teaches the fluid length (L) of the injected molten resin and the average wall thickness (t) of the container is: $L/t \leq 250$ [Okabe, Col. 10 Lines 3-9]. With the length of

the container appearing to be 55 mm, and the thickness appearing to be 1.1 mm, the ratio of the length to the thickness is approximately 50.

16. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shinoki in view of Okabe as applied to claims 1, 2, and 3 above, respectfully, and further in view of Tachi et al. (USPGP 2002/0150706) [hereinafter Tachi].

Shinoki in view of Okabe discloses all the limitations substantially as claimed, as applied to claims 1, 2, and 3 above, respectfully. The Shinoki and Okabe combination does not expressly disclose that the thickness of said label is not more than 150 μm ; however, the publication to Tachi – a bottle with an attached label – teaches a resin container [Tachi, 1] with an attached label [Tachi, 2] of thickness less than 150 μm [Tachi, Paragraph 39 Lines 1-3]. It would have been obvious at the time of the invention to one of ordinary skill, with known options available to one of ordinary skill within their technical grasp leading to anticipated success, to modify the thickness of the labels in the Shinoki and Okabe combination container to be less than 150 μm , as suggested by Tachi, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. See *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

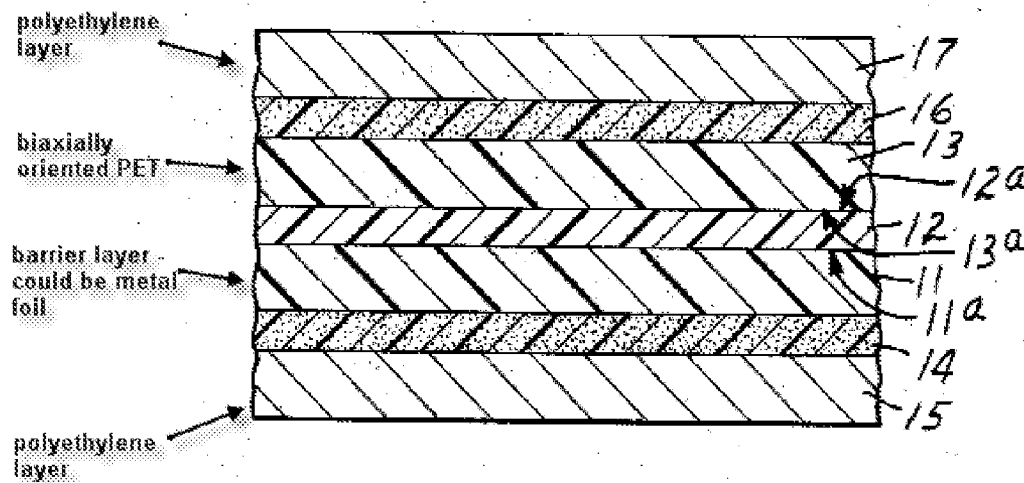
17. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shinoki in view of Okabe as applied to claim 7 above, and further in view of Paciorek et al. (USPN 3,685,734) [hereinafter Paciorek].

Shinoki in view of Okabe discloses all the limitations substantially as claimed, as applied to claim 7 above. Although Shinoki discloses the thin film positioned on the

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front face and the thin film positioned on the rear face of said label consist of biaxially oriented polypropylene resin film layers or polyethylene resin film layers [**Shinoki**, Paragraph 19 Lines 1-5], the Shinoki and Okabe combination does not expressly disclose that said resin film layers having a defined strength consist of biaxially oriented polyethylene terephthalate (PET) film layers, biaxially oriented polyamide film layers or biaxially oriented polypropylene film layers, and the barrier layers consist of metal foil layers, vapor-deposited metal film layers, or inorganic vapor-deposited oxide film layers. However, the patent to Paciorek – a magazine consisting of plastic and foil layers - teaches two plastic resin layers [**Paciorek**, 15, 17] that surround a resin layer [**Paciorek**, 13] made of biaxially oriented PET [**Paciorek**, Claim 8], and a barrier layer [**Paciorek**, 11] that could be made of metal foil [**Paciorek**, Col. 5 Lines 34-37]. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the label in the Shinoki and Okabe combination container to have a biaxially oriented PET resin layer and a metal foil layer in between two polyethylene resin layers forming a magazine stack of layers, as suggested by Paciorek, to form “a composite laminar sheet structure comprising (1) a base ply having a low vapor transmission rate, ... and (3) a flexible, continuous, extremely smooth, removable, replaceable cover sheet ply having a low vapor transmission rate.” [**Paciorek**, Col. 2 Lines 11-17].

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Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: see PTO-892 Notice of References Cited for prior art considered relevant to this application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT J. HICKS whose telephone number is (571)270-1893. The examiner can normally be reached on Monday-Friday, 8:30 AM - 5:00 PM, EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert J Hicks/
Robert J. Hicks
Examiner, Art Unit 3781

/Anthony D Stashick/
Anthony D Stashick
Supervisory Patent Examiner, Art
Unit 3781